

**Remarks**

The Office Action mailed November 29, 2007 and made final has been carefully reviewed and the following remarks are submitted in consequence thereof.

Claims 1-64 are now pending in this application, of which claim 48 has been amended. Claims 22-30 and 43-64 are withdrawn from consideration as directed to a non-elected invention.

I. The Finality of the Office Action

Applicants respectfully submit that the finality of the Office Action is improper because the Office Action (1) fails to address all the claims and the issues per Applicants' previous response, and (2) a new ground of rejection is raised that could not have been necessitated by an Amendment of the Applicant. Applicants accordingly request that the finality be withdrawn in favor of a complete and proper Office Action.

A. The Office Action is Incomplete

Applicants note that claim 15 is nowhere acknowledged in the Detailed Action. Applicants respectfully submit that the Office's failure to acknowledge claim 15 precludes the Office Action properly being made final. (See MPEP § 706.07(a)). Applicants request clarification of the status of claim 15 in the next Office Action.

The present Office Action is also incomplete because it does not reply to Applicants' argument against the restriction requirement made in the previous Office Action, nor does it make the restriction requirement final. The Office is reminded that, in order for Office Actions to be considered complete per the applicable policies of the Office, they must be responsive to each point of argument raised by Applicants so that the issues can be clearly framed for appeal, if necessary, in as few Office Actions as possible.

Applicants maintain their position, for the reasons detailed in Applicants' previous response, that no adequate basis for the restriction requirement has been established on the present record and consequently that the Restriction Requirement is improper as a matter of both

substance and procedure. Applicants have listed the withdrawn claims in their entirety so that the Office can once again compare the language of the withdrawn claims to the claims being prosecuted. The similarity in the language of the claims is believed to weigh against any reasonable application of the restriction procedures available to the Office. In particular, the similar language of the claims is believed to preclude any additional burden on the Office to examine all of the claims, as a thorough search of any of the claim groups referenced in the restriction requirement would entail some consideration of the other groups referenced in the restriction requirement, not to mention that all of the presently pending claims have previously been searched and examined in a prior Office Action.

Applicants once again request that the Office reconsider and withdraw the restriction requirement in light of the applicable Office policies for making such requirements. Alternatively, Applicants request that the Office clarify the finality of the Restriction Requirement and also the basis therefor in the next communication from the Office so that Applicants may judge the advisability of petition or appeal on this issue.

B. New Grounds of Rejection Are Being Asserted

Applicants note that the previous Office Action setting forth the Restriction Requirement was responded to by the Applicants without amending any claim. In the present Office Action, Applicants are now faced with a newly cited reference. The finality of Office actions is addressed in section 706.07(a) the Manual of Patent Examining Procedure (MPEP), which provides that:

Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement during the period set forth in 37 C.F.R. §1.97(c) with [the appropriate fee].

Because Applicants did not amend any claim in response to the previous Office Action, no action taken by the Applicants could have prompted the citation of the newly cited reference in the present Office Action, and the citation of the newly cited reference precludes the finality of the present Office Action as a matter of procedure.

Applicants accordingly request that the finality of the Office Action be withdrawn and that the present amendment be entered as a matter of right and fairly considered by the Office.

II. The Section 102 and 103 Rejections

The rejection of Claims 1, 3, 5-11, 13, 16-21, 31-37, and 40-42 under 35 U.S.C. § 102(a) as being anticipated by Jones III et al. (U.S. Patent No. 6,334,110) (hereinafter referred to as “Jones”) is respectfully traversed.

Jones describes a system and method of targeted marketing, and emphasizes the avoidance of “junk mail” for goods and services which the receiving party has no interest in whatsoever. As stated by Jones, what is needed is a more effective way to target consumers for specific marketing, and to allow consumers to receive advertisements from a variety of merchants and service providers “without regard to where prior purchases were made.” See col. 3, lines 31-41. Applicants submit that Jones relates to a targeted marketing technique using cooperative advertising to reach new customers via existing communications channels. In contrast, the presently claimed subject matter is directed to the management of customer relationships for lenders engaged in the business of providing financing, wherein actions can be taken to retain customers as loan customers. These are fundamentally different concepts and are believed to be distinguishable on a number of levels, including but not limited to at least the aspects explained below.

Independent Claim 1 recites, among other things, “calculating for each customer at least one of an expected income from the customer for the dealer and a timing of purchase of a product from the dealer based on the predicted future customer behavior.” Independent Claim 11 similarly recites a server configured to “calculate for each customer at least one of an expected income from the customer for the dealer and a timing of purchase of a product from the dealer based on the predicted future customer behavior.” Independent Claim 31 recites “a calculation for each customer of at least one of an expected income from the customer for the dealer and a timing of purchase of a product from the dealer based on the predicted future customer behavior.” Claim 35 recites “means for calculating for each customer at least one of an expected income from the customer for the dealer and a timing of purchase of a product from the dealer based on

the predicted future customer behavior.” Applicants respectfully submit that the anticipation rejection over Jones is based in part on a misreading of these recitations. The Office Action cites column 6, line 28 to column 7, line 11 against these recitations, and specifically notes that “high net worth” as referenced in Jones suggests expected income.

It is believed to be apparent, however, that Jones is discussing incomes *of* the consumers. See, e.g., col. 6, line 44-46 (discussing demographic sorting of information about consumers of certain incomes) and col. 6, lines 57-59 (discussing personal loans to consumers of high net worth and good credit ratings). See also col. 10, lines 8-19 (distinguishing consumers with high income and good credit from consumers with lower income and poor credit history). Applicants submit that the income described by Jones is corresponds to the income recited in claims 1, 11, 31 and 35 wherein “the financial data includes at least one of *income*, loan and credit payment history, and loan and credit overpayments for each customer.” This is not the same “income” recited later, however, in independent Claims 1, 11, 31 and 35, each of which recite “expected income *from the customer for the dealer*.” Income from the customer for the benefit of the dealer is not the income referenced in the financial data recited, and is not the consumer income as Jones references, nor is it believed that consumer income is in any way suggestive of the subject matter presently claimed.

It is possible, for example, that a consumer may have a very high income, but such a consumer will provide no income for the dealer in the absence of a purchase or other relationship. It is also possible, contrary to the suggestion otherwise in the Office Action, that a person can have a low or even negative income but still have a high net worth. Of course, the opposite is also true in that a person may have a very high income but a low net worth. Even so, however, high income and/or high net worth individuals do not produce income *for the dealer* in the absence of an existing relationship with the dealer. As such, the demographic sorting of income data described by Jones has no immediate relation to the subject matter claimed insofar as the calculation of expected income *from the customer for the dealer*. This is believed to be particularly apparent in light of the supporting specification and the discussion of income *from the customer* as claimed. Jones does not fairly disclose or suggest this aspect of the invention as claimed.

Further, Jones does not describe the calculation of a timing of a purchase of a product from the dealer as each of independent claims 1, 11, 31, and 35 recite. Rather, Jones describes multivariate analysis of buying trends of consumers that allow presentation of items or services to the consumers at “the appropriate time.” Jones describes examples of such multivariate analysis including the purchaser of a luxury car being more inclined to take a cruise or stay at a four star resort, and a person who purchases a sports utility vehicle being more interested in fishing and camping equipment. See col. 7, lines 4-11. Jones describes that mailings will be presented to consumers who “have the highest probability of actually wanting the goods and services in question.” See col. 7, lines 16-18. While not clearly defining the “appropriate time” Jones apparently considers it to be “via the communications channel that has the highest probability of garnering the attention of the consumer to the offer being made.” See col. 7, lines 18-24 (citing the example of a custom generated statement to be incorporated in a monthly credit card statement). It is clear from at least these passages of Jones that such communications are not made in contemplation of any calculation of a timing of a purchase by a consumer, but rather only a probabilistic likelihood of interest on the part of a consumer when received by an existing communications channel. As Applicants explain in the present specification, the inventive subject matter disclosed includes considerations of propensity *and* timing. Nothing in the Jones disclosure teaches or suggests a calculation of a timing of a purchase of a product.

Because Jones does neither describes a calculation of an *expected income from the customer for the dealer*, nor does Jones describe a calculation of a *timing of a purchase of a product from the dealer*, Jones does not teach or suggest related steps or features of generating lists based on such expected income or timing in independent claims 1, 11, 31 and 35.

Finally, Jones does not teach or suggest steps or features regarding financing by the lender for the dealer as part of the offer as each of independent claims 1, 11, 31 and 35 recite. Figure 2 of Jones and col. 8, line 65 to col. 9, line 34 are cited against these recitations, but there is nothing in the text of Jones that supports the rejection of the claimed subject matter. Figure 2 shows lending institutions, among other examples, as types of services that can be offered by content providers. Nothing in the accompanying description, however, and particularly col. 8, line 65 to col. 9, line 34 states that the lending institutions are acting in concert in any way with the purchase of merchandise, home or automobile, for example, that would implicate the language of

independent claims 1, 11, 31 and 35. That is, financing is represented in Figure 2 of Jones as a stand-alone service, and not in connection with an offer for any specific item available from a dealer as the pending claims recite. Alternatively stated, nothing in Jones indicates that an offer of purchase of any item or service includes financing by a lender.

Accordingly, for at least the reasons set forth above, independent claims 1, 11, 31 and 35 are not anticipated, nor are they reasonably suggested by Jones. Independent claims 1, 11, 31 and 35 are therefore submitted to be patentable over Jones, and when the recitations of dependent claims 3, 5-10, 13, 16-21, 32-34, and 36-42 are considered in combination with their respective independent claims, claims 3, 5-10, 13, 16-21, 32-34, and 36-42 are likewise submitted to be patentable.

Applicants respectfully request that the Section 102 rejection of Claims 1, 3, 5-11, 13, 16-21, 31-37, and 40-42 be withdrawn.

The rejection of Claims 2, 12, 38 and 4, 14, 39 under 35 U.S.C. § 103(a) as being unpatentable over Jones is respectfully traversed.

According to the Office Action, the Examiner takes Official Notice of “the Hit and Run and Dormancy models [as] being obvious extensions to Jones market analysis to provide market campaigns that can be targeted to specific customers.”

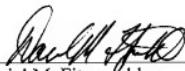
Applicants respectfully traverse the Official Notice. Official Notice may be used for “facts...capable of such instant and unquestionable demonstration as to defy dispute”. (See *In re Ahlert*, 424 F.2d 1088, 165 USPQ 418, 420 (CCPA 1970). Applicants submit that the Official Notice provided in the Office Action does not include facts that are capable of instant and unquestionable demonstration as to defy dispute. More specifically, Applicants submit that the assertion that “the Hit and Run and Dormancy models [are] obvious extensions to Jones’ market analysis to provide market campaigns that can be targeted to specific customers” is not a fact that is capable of instant and unquestionable demonstration as to defy dispute. Accordingly, Applicants submit that the Official Notice taken in the Office Action is improper.

Applicants further note that each of claims 2, 12, 38 and 4, 14, 39 are dependent claims. The independent claims are submitted to be patentable over Jones for the reasons set forth above, and when the recitations of claims 2, 12, 38 and 4, 14, 39 are considered in combination with the recitations of their independent claims, claims 2, 12, 38 and 4, 14, 39 are likewise submitted to be patentable over Jones.

Accordingly, for at least the reasons set forth above, Applicants respectfully request that the Section 103 rejection of Claims 2, 12, 38 and 4, 14, 39 be withdrawn.

In view of the foregoing amendments and remarks, all the claims now active in this application are believed to be in condition for allowance. Reconsideration and favorable action is respectfully solicited.

Respectfully Submitted,



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